

STATE OF HAWAII
Department of Land and Natural Resources
Engineering Division

September 9, 2010

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

**Authorization to Enter Into an Inter-Governmental Agreement
Between the State of Hawaii and the County of Hawaii, Department of
Water Supply, Regarding the State of Hawaii's Participation in the Development
of the Waimea Well, Waimea, Hawaii**

The Engineering Division desires to enter into an Inter-Governmental Agreement with the County of Hawaii, Department of Water Supply (DWS), to receive water allocation units for their participation in the development of the Waimea Well for State projects.

BACKGROUND:

The Engineering Division (ED) administers the Water and Land Development Program. The objective of this program is to economic development and enhance public welfare by developing water supplies and State lands. To meet this objective, the ED successfully completed exploratory drilling of Waimea Well (State Well No. 6240-02) on March 1, 2000, with a yield of approximately 2 mgd and chloride content in the 4 to 6 mg/L range.

DWS will develop Waimea Well by outfitting it with the pump, motor, and supporting facilities. This is in line with their long term goal to ultimately replace the source of water in the Waimea area from surface to well. Based on this the ED determined that it would be advantageous to participate in the development of this well, in lieu of having to develop this own well on their own. The ED proposes to enter into an Inter-Governmental Agreement with DWS to participate in the development of the Waimea Well on TMK: 6-5-01:03.

DLNR completed the environmental assessment for the well drilling project. DWS completed the environmental assessment for the well development phase.

PROPOSED AGREEMENT:

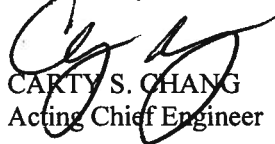
The Engineering Division desires to enter in an IGA for the development of the Waimea Well on TMK: 6-5-01:03, Waimea, Hawaii. The DWS will provide water allocation units to the Engineering Division, in direct proportion to its financial contribution for exploratory drilling and testing the well.

A copy of the draft Inter-Governmental Agreement is attached.

RECOMMENDATION:

That the Board authorize the Chairperson, subject to review and approval by the Attorney General, to sign the Inter-Governmental Agreement to participate in the development of the Waimea Well development and other necessary documents pertaining to the project.

Respectfully submitted,

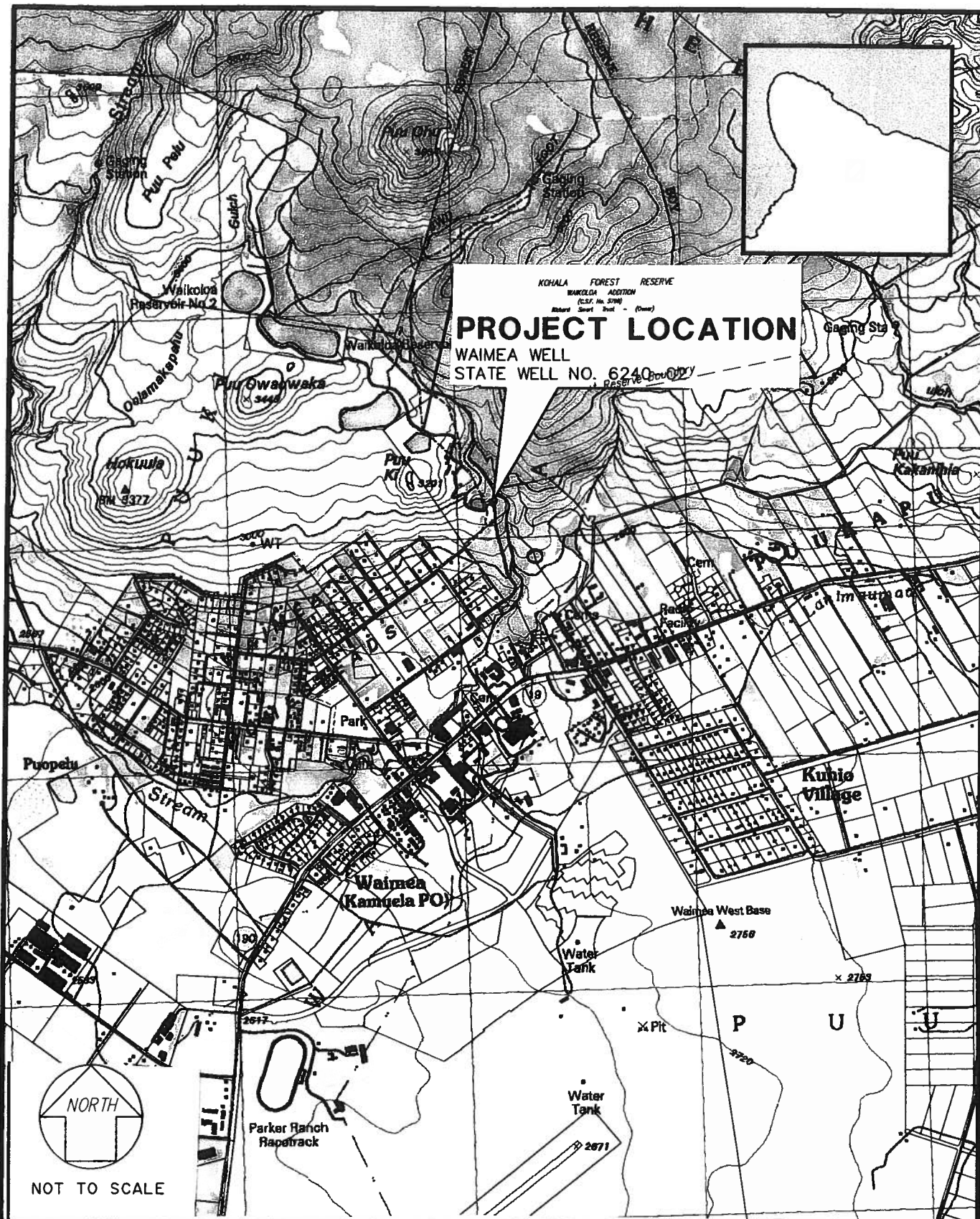

CARTY S. CHANG
Acting Chief Engineer

Attachments

Approved For Submittal:


LAURA H. THIELEN, Chairperson
Board of Land and Natural Resources

ITEM L-4



WAIMEA WELL DEVELOPMENT PHASE II

EXHIBIT

PROJECT LOCATION MAP

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Prepared by: Akinaka & Associates, Ltd. - Consulting Engineers

Date: Jan. 20, 2006

DRAFT

INTER-GOVERNMENTAL AGREEMENT
BETWEEN THE STATE OF HAWAII AND THE COUNTY OF HAWAII,
REGARDING THE WATER ALLOCATION UNITS FROM THE DRILLING OF THE WAIMEA
EXPLORATORY WELL FOR STATE PROJECTS

This Agreement, made this ____ day of ____, 2010 by and between the Board of Land and Natural Resources, State of Hawai'i, whose street address is 1151 Punchbowl Street, Room 130, Honolulu, Hawai'i, 96813, hereinafter referred to as the "STATE", and the Department of Water Supply, County of Hawai'i, by and through its governing board the Water Board of the County of Hawai'i, whose principal place of business and mailing address is 345 Kekuanaoa Street, Suite 20, Hilo Hawai'i 96720, hereinafter referred to as the "DWS".

The STATE and DWS, in consideration of the mutual promises hereinafter set forth, mutually agree as follows:

1. The STATE had successfully drilled and cased the Waimea Exploratory Well (State Well No. 6240-02)("Well Site") in 1999. DWS will be completing the development of the well by outfitting with the pump, motor and supporting facilities. The STATE agrees to transfer the Well Site to DWS. However, the STATE will receive a portion of the equivalent units of water for State projects in direct proportion to its financial contribution for the drilling and casing of the well upon transfer of the Well Site to the DWS.
2. The STATE and COUNTY agree that the STATE is entitled to allocate or assign to State agencies' properties, within the Waimea water system ("The Properties"), 400 Equivalent Units of water or 240,000 gallons per day (gpd).
3. The STATE hereby allocates the above units as shown below:

50 Equivalent Units	Department of Accounting and General Services
50 Equivalent Units	Department of Education
300 Equivalent Units	Department of Hawaiian Home Lands.

4. Upon transfer of the Well Site from the STATE to DWS by means of a Bill of Sale or other appropriate document(s), DWS will allocate the corresponding number of Equivalent Units to the State agencies for their project developments within the Waimea water system, subject to STATE's payment of the facilities charges prevailing at the time the State agencies take action which, pursuant to the Rules and Regulations of the Department of Water Supply, would require the payment of said facilities charges.
5. The STATE shall receive a credit toward the payment of any facilities charges that become due pursuant to paragraph 4, up to the amount it expended for the drilling and casing of the Well Site. The maximum credit that may be obtained against the prevailing facilities charges per this agreement is 22% of the facilities charges pursuant to DWS Rules and Regulations. Thus, if the facilities charge for an Equivalent Unit is \$5,500, a 22% facilities charge credit of \$1,210 would be applied, and the STATE would only be obligated to pay to DWS a facility charge of \$4,290 per Equivalent Unit.

6. Equivalent Units. An Equivalent Unit is equal to six hundred (600) gallons per day (gpd) maximum daily water usage. Maximum daily usage is defined as 1.5 times the average daily usage. The DWS reserves the right to require STATE to allocate more than one Equivalent Unit to the development of any lot (residential, condominium or other).

All Equivalent Units granted herein shall remain appurtenant to The Properties to which they are assigned, shall be used on The Properties and shall not be transferable or assignable once assigned to a particular parcel of land or lands. All assignments are subject to the approval of the Department of Water Supply.

STATE shall allocate one (1) Equivalent Unit per single family residential unit, each equivalent unit consisting of 600 gallons per maximum day. Water allocation for multiple family residential units, commercial, industrial, agricultural and other uses shall be based on an engineer's assessment of the project water use based on accepted industry standards, review of water use, or similar activities or based on other methods to which DWS, and STATE may mutually agree. A minimum of one (1) Equivalent Unit shall be assigned per dwelling unit.

STATE understands and agrees that the granting of such Equivalent Units and any assignment thereof is subject to any and all improvements required by DWS in order to utilize such units.

7. Automatic Expiration of Equivalent Units. The Equivalent Units as provided herein shall expire within twenty (20) years of the date of this Agreement if not actually in use, and any unfulfilled duties and obligations of the parties to this Agreement shall cease and be null and void without further action by any party.
8. Indemnification. DWS shall indemnify, defend, and hold harmless the STATE, its officers, employees, and agents, from and against any and all claims, demands, liabilities, suits, actions, causes of action, judgments, costs, and expenses (including attorneys' fees) for loss, injury, death, or damage, including without limitation, claims for property damage, personal injury, or death of persons, whenever such damage, injury, loss, or death arises out of, is connected with or related to the development of Waimea Well. It is understood that the STATE shall in no way be held liable for any claims, damages, causes of action, or suits resulting from any acts or omissions of DWS in the development of Waimea Well.
9. Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with the laws of the State of Hawai'i, and the courts of the State of Hawai'i shall have exclusive jurisdiction in any action to interpret or enforce this Agreement.
10. Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agent of DWS, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law.
11. Compliance with laws. DWS shall comply with all of the requirements of all municipal, state, and federal authorities and observe all municipal, state and federal laws applicable to the development of Waimea Well, now in force or which may be in force.

12. Headings. The article and paragraph headings herein are inserted only for convenience and reference and shall in no way define, describe or limit the scope or intent of any provision of this Agreement.
13. Partial invalidity. If any term, provision, covenant or condition of this Agreement should be held to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.
14. Waiver. No party to this Agreement shall be deemed to have waived the exercise of any right or any obligation hereunder, unless such waiver is made expressly and in writing.
15. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all other prior or concurrent oral or written letters, agreements, or understandings.
16. No Party Deemed Drafter. Each party has thoroughly reviewed and revised this Agreement and has had the advice of counsel prior to the execution hereof, and the parties agree that neither party shall be deemed to be the drafter of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT effective on the day and year first above written.

By _____
Laura H. Thielen
Chairperson, Board of Land and Natural Resources
GRANTOR

RECOMMEND APPROVAL:

Milton D. Pavao, Manager

APPROVED AS TO
FORM AND LEGALITY

Assistant Corporation Counsel
County of Hawai'i

Date: _____

WATER BOARD OF THE
COUNTY OF HAWAI'I

By _____
Its Chairman
GRANTEE